

Members

Sen. Ron Alting, Chairperson
Sen. Richard Bray
Sen. James Merritt
Sen. Timothy Lanane
Sen. Earline Rogers
Sen. Vi Simpson
Rep. Trent VanHaaften, Vice-Chairperson
Rep. Scott Pelath
Rep. Phil GiaQuinta
Rep. Matt Bell
Rep. Jack Lutz
Rep. Thomas Dermody



INTERIM STUDY COMMITTEE ON ALCOHOLIC BEVERAGES

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Authority: P.L. 94-2008 (HEA 1118-2008)

MEETING MINUTES¹

Meeting Date: August 15, 2008
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. Ron Alting, Chairperson; Sen. Richard Bray; Sen. James Merritt; Sen. Timothy Lanane; Sen. Earline Rogers; Sen. Vi Simpson; Rep. Trent VanHaaften, Vice-Chairperson; Rep. Scott Pelath; Rep. Matt Bell; Rep. Jack Lutz; Rep. Thomas Dermody.

Members Absent: Rep. Phil GiaQuinta.

1. Call to order and introduction of members

After Sen. Alting called the meeting to order at 1:05 p.m., the Committee members and staff introduced themselves.

2. Committee study topics and operating policies.

Anne Haley, attorney for the Committee, discussed the Committee operating policies and read the Committee's study topics from P.L. 94-2008 and Legislative Council Resolution 08-01:

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

- (1) Alcohol server training and employee permits for sales clerks in dealer establishments.
- (2) Additional one, two, or three-way permits for restaurants in economic development areas.
- (3) Displaying alcoholic beverages in separate areas in dealer establishments.
- (4) The historic origins of Indiana alcoholic beverage laws and the Twenty-first Amendment to the Constitution of the United States and its place and purpose in the twenty-first century.
- (5) Sunday sale of microbrewery products for carry-out at Indiana microbreweries.

3. Testimony and committee discussion

(A) Additional one, two or three-way permits for restaurants in economic development areas

Representative Craig Fry

Sen. Alting asked Committee attorney, Anne Haley, to read a letter written to the Committee by Rep. Craig Fry. (Exhibit 1). Rep. Fry expressed his concern that granting discounted restaurant three-way permits for economic development areas would reduce the value of existing restaurant permits. He requested the Committee to exclude Mishawaka at least temporarily from any proposed legislation on this issue.

Matt Brase, Indiana Association of Cities and Towns

Mr. Brase made the following points:

- Additional permits for economic development areas are tools for strengthening the economy. He suggested that the legislature create a statewide formula for issuing additional permits.
- One proposal is to allow a municipality that can prove that its population has increased since the last census to receive additional alcoholic beverage permits in anticipation of the next census.
- Allowing additional permits for riverfront development projects penalizes those areas without rivers.
- "Lifestyle centers" containing retail businesses, movies, and restaurants create jobs and attract other businesses to the area. Lifestyle centers cannot be built without additional restaurant permits.
- Additional permits issued to economic development areas should not be able to be sold or transferred.
- One proposal, similar to Michigan's law, is to distribute permits based upon population and the amount of investment in the economic development project. Mr. Brase submitted a copy of Michigan's statute to the Committee (Exhibit 2).
- Local redevelopment commissions should be involved in the process of developing a definition of "economic development area" for purposes of issuing alcoholic

beverage permits.

Tanya Galbraith, Town Manager of McCordsville

Ms. Galbraith made the following points:

- The unavailability of restaurant permits is a setback for developing new retail centers and revitalizing existing ones.
- McCordsville does not want to wait until the next decennial census to acquire permits and a special census is cost prohibitive. In addition, the Census Bureau does not allow a special census after November of this year because preparations are being made for the next decennial census.

Tom Klein, Town Manager of Avon

Mr. Klein testified that the current quota system relies upon census figures that do not accurately reflect the number of people in a metropolitan statistical area. He stated the following:

- According to the 2000 census, Avon's population is 6,000, while its actual population is 12,000.
- Considerable population growth has occurred outside Avon's boundaries. An estimated 40,000 people from the unincorporated areas come into Avon to shop, eat in its restaurants, and use its services.

The Committee discussed the difference between providing development incentives in distressed areas and issuing additional permits in areas experiencing rapid economic growth.

Dr. Thomas Van Horn, Planner/Project Manager for the City of Lafayette

Dr. Van Horn discussed Lafayette's riverfront development district, submitting his testimony to the Committee in writing. (Exhibit 3) Dr. Van Horn attributed the successful revitalization of the district to its restaurants.

The Committee discussed what effect additional permits would have on the value of existing restaurant permits and whether there is any available public data on these values.

Bob Super, Precision Development

Mr. Super discussed the Oak Street Commons development project in Schererville, and submitted written information to the Committee about the project. (Exhibit 4). He also submitted to the Committee a letter from Mr. Matt Murphy, Economic Development Director of the City of Valparaiso, that discussed the positive impact that additional restaurant permits have on the city's downtown area. (Exhibit 5) Mr. Super made the following points:

- The project would bring additional revenue and jobs to the area and provide retail to the area that is currently only available in the Chicago area.
- The unavailability of permits has created an environment where existing permit

holders can ask for huge sale prices for their permits. He estimates that a permit outside of the project area could be purchased for \$150,000 to \$200,000. However a proposed development project can cause permit prices to sharply increase. In the case of the Oak Street Commons project, a permit holder asked \$800,000 for an existing permit while another asked \$1,000,000 for the license and permit property.

- Indiana's use of residential population figures for permit quotas is outdated because it doesn't recognize that people travel long distances between their home and their place of business. Conducting a traffic count on the highway leading to a municipality would provide a more accurate measure of the activity in and around the municipality.
- Other states give municipalities the authority to develop standards for issuing permits and to actually restrict the number of permits.

Mark Palmer, attorney, Taft Stettinius & Hollister LLP , on behalf of Al Krygier, Schererville

Mr. Palmer explained that Al Krygier and his colleagues own 14 independent restaurants in the Schererville area. Mr. Palmer related the following points:

- Krygier and colleagues are concerned about the attempts that have been made in previous legislative sessions to allow permits to be issued in economic development areas for as little as \$1,000. They are also concerned about the statutory mandate that some permits in economic development areas are attached to the permit premises.
- The area where the Oak Street Commons project is located is not an economically distressed area, so permits would not be issued to revitalize the area but to enhance the area's rapidly growing economy.
- When the state issues additional economic development permits resulting in a reduction in the value of existing permits, the issues raised are similar to those raised in an eminent domain situation.
- Since many permit holders plan on using the sale proceeds of their permit to fund their retirement, they want the marketplace to work and not have the state undermine the value of their property.
- Banks often use the value of a permit to issue a line of credit to the permit holder.

Sen. Bray commented that the value of a permit is artificial because it is the state that creates the value. Mr. Palmer said that the permit's value lies in the fact that the permit holder must consent to the permit's transfer.

Don Marquardt, Indiana Licensed Beverage Association

Mr. Marquardt said that the issue is the validity of the current quota system, which he supports. Mr. Marquardt made the following comments:

- In the case of riverwalk economic development areas, some existing permit holders abused the system by purchasing less expensive economic development area permits and then selling their existing permits.

- Permits issued outside of the quota are of more concern than permits issued in anticipation of the census.
- Cities overlook the effect on existing permit holders of issuing permits to economic development areas.
- One suggestion would be to allow a developer to buy a permit at fair market value and receive a local or state tax break or incentive to compensate the developer for the cost of the permit.

Lisa Hutcheson, Director, Indiana Coalition to Reduce Underage Drinking

Ms. Hutcheson submitted her testimony in writing (Exhibit 6) Ms. Hutcheson discussed her concern that Sunday microbrewery carryout sales and additional permits in economic development areas would increase access to alcoholic beverages. She stated that with regard to issuing additional permits in economic development areas, the characteristics of the community need to be considered. Statistics show that there are more alcoholic beverage sales in low income areas, accompanied by increased crime, violence, and impaired driving.

John Livengood, Restaurant and Hospitality Association of Indiana

Mr. Livengood explained that the 13,000 restaurants he represents constitute Indiana's largest private sector employer. He made the following points:

- Restaurants owners are people who have invested a lot of sweat equity in their businesses. He asked the Committee not to undermine these businesses.
- Since there aren't any county quotas, some bars and restaurants locate outside the municipal limits. If they are annexed into the municipality, their permit is grandfathered in. This is how municipalities acquire permits that exceed the quota. Municipalities like Schererville, however, don't have any room to expand their borders.
- Creating a county-wide quota would be one way to account for the growing suburban population outside the cities.
- One proposal would be to create a tavern permit that is separate from a restaurant permit.
- Cities or economic development areas should be allowed to purchase additional permits at fair market value.
- New permits should be sold at auction and available to everyone, not just developers.
- Committee members should talk to owners of restaurants and taverns in their districts.

The Committee discussed the proposal for a countywide quota. Members discussed the possibility that permits would be purchased for suburban areas and then transferred to urban areas; as a result, some areas would have few or no permits while others would have an excess of permits. In response to the Committee's request for data

regarding the effect of these permits on the value of existing permits, attorney Jeffrey McKean said that he may be able to provide the Committee with general information regarding permit sales.

(B) Sunday sale of microbrewery products for carry out at Indiana microbreweries

Mark Webb, attorney, representing Brewers of Indiana Guild

Mr. Webb explained that microbreweries want the limited right to sell carry out of their own products on Sunday for at home consumption, the same right that the legislature has given to farm wineries. Mr. Webb made the following points:

- All of Indiana's breweries are microbreweries that brewed less than 1% of beer sold in the state last year. Twenty-five of Indiana's 26 microbreweries have restaurants and employ 1,000 people.
- Microbreweries are tourism sites. Events such as the annual microbrewer's festival have grown significantly.
- Indiana's microbreweries are nationally and internationally known and have won many awards.
- Current law limits the amount of beer microbreweries can sell for carryout to not more than a keg. Most customers purchase six packs or half gallon "growlers" to take home with them after touring the brewery.

Penn Jensen, Upland Brewing Company and Executive Director, Brewers of Indiana Guild

Mr. Jensen said that he wanted to speak only on the issue of tourism. He discussed the creation of an Indiana Brewer's Trail. He said that not allowing Sunday carryout sales is a real drawback to tourism because people who visit the brewery are not allowed to buy any of the products that they tasted.

Ted Miller, Brugge Brasserie and President, Brewers of Indiana Guild

Mr. Miller explained that Indiana breweries are gaining respect, winning awards, and have the potential to be national leaders in the craft brewing industry. One of Indiana's microbreweries, Three Floyds, was named the best brewery in the world by beeradvocate.com. Mr. Miller said that they can't properly promote weekend tours since they can't sell carryout on Sunday. Wisconsin and Illinois have very favorable laws for breweries.

John Hill, Broad Ripple Brewpub and Board Member, Brewers of Indiana Guild

Mr. Hill explained that he started the Brewers of Indiana Guild in 2000. With regard to underage drinking, he has never had a violation in the 18 years he has had his business. Selling carryout on Sunday would mean minimal sales for his business. He emphasized that the microbreweries only want to sell their own beer out of their own breweries, something that the farm wineries have been able to do since 1986.

Greg Emig, Lafayette Brewing Company and Vice-President, Brewers of Indiana Guild

Mr. Emig discussed the origins of his brewery and its contribution to the revitalization of downtown Lafayette. He described other ways that his business has given back to the community including funding scholarships and endowments. He said that Sunday carryout sales present an additional opportunity to reach out to the tourism market.

Rep. Bell made the suggestion to the Committee that the legislature may want to consider supporting microbreweries in the manner that wineries receive state support through the wine grape market development fund.

Jeff Eaton, Barley Island Brewing Company and Secretary/Treasurer, Brewers of Indiana Guild

Mr. Eaton said that since his brewery's beer is being distributed throughout Indiana and into Illinois, his brewery is getting more tourists. These tourists buy merchandise, six packs, and growlers. He discussed the popularity of "kegerators" and how he has been contacted on Sunday by people wanting to purchase a keg.

John Livengood, Indiana Association of Beverage Retailers

Mr. Livengood explained that he is representing Indiana package liquor stores. He said that package liquor stores do not have Sunday carryout sales and do not want Sunday sales. His clients are concerned that this authority to have Sunday sales will eventually be granted to package liquor stores.

Grant Monahan, Indiana Retail Council

Mr. Monahan discussed the creation of Hoosiers for Beverage Choices which has launched an Internet effort to petition the General Assembly for cold beer sales and Sunday sales of alcoholic beverages in drug, grocery, and convenience stores. Mr. Monahan submitted a written memorandum to the Committee on these sales issues. (Exhibit 7).

Rep. VanHaaften objected that Mr. Monahan's testimony is outside of the study topic assigned to the Committee concerning microbrewery Sunday sales.

Joe Lackey, Indiana Grocery and Convenience Store Association

Mr. Lackey said that his association does not object to Sunday sales by microbreweries. He said that the legislature needs to look at Sunday sales at all retail outlets. Since restaurants are allowed to sell alcoholic beverages on Sunday for consumption on the premises, the state seems to find it acceptable to drink and drive but not acceptable to purchase alcoholic beverages to consume at home.

Elizabeth Spiller

Ms. Spiller explained that she was representing a person who died last week, the victim of a drunk driver. She said that in addition to looking at how these issues affect business profits, the Committee should also consider how they affect people.

4. Adjournment/ next meeting

Anne Haley, counsel for the Committee, announced that the next meeting of the Committee would be held on August 20, 2008 at 1:00 p.m. in Room 431 of the State House. Sen. Altig adjourned the Committee meeting at 3:35 p.m.